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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS-2015-0026]

RIN: 0583-AD60

Classes of Poultry

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

Summary: The Food Safety and Inspection Service (FSIS) is amending the definition and standard of identity for the "roaster" or "roasting chicken" poultry class to better reflect the characteristics of "roaster" chickens in the market today. "Roasters" or "roasting chickens" are described in terms of the age and ready-to-cook (RTC) carcass weight of the bird. Genetic changes and management techniques have continued to reduce the grow-out period and increased the RTC weight for this poultry class. Therefore, FSIS is amending the "roaster" definition to remove the 8-week minimum age criterion and increase the RTC carcass weight from 5 pounds to 5.5 pounds. FSIS is taking this action in response to a petition submitted by the National Chicken Council.

DATES: Effective Date: January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Rosalyn Murphy-Jenkins,
Director, Labeling and Program Delivery Staff, Office of Policy
and Program Development, FSIS, USDA; Telephone (301)504-0879.

SUPPLEMENTARY INFORMATION:

Background

The Poultry Products Inspection Act (PPIA) prohibits the distribution of poultry products that are adulterated or misbranded (21 U.S.C. 458). The PPIA also authorizes the Secretary of Agriculture to prescribe, among other things, definitions and standards of identity or composition for poultry products whenever the Secretary determines that such action is necessary for the protection of the public (21 U.S.C. 457(b)). Poultry classes were established by USDA to aid in labeling poultry (9 CFR 381.170). The classes were based primarily on the age and sex of the bird. FSIS uses poultry class standards to ensure that poultry products are labeled in a truthful and non-misleading manner.

On August 19, 2015, FSIS published a proposed rule to amend the definition and standard of identity for the "roaster" or "roasting chicken" poultry class (hereafter referred to as "roasters") (80 FR 50229). Under the current regulations, a

"roaster" is defined as a young chicken (between 8 and 12 weeks of age), of either sex, with a RTC weight of 5 pounds or more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than that of a broiler or fryer (9 CFR 381.170(a)(1)(iii)). FSIS published the final rule that established the current poultry class standards, including the "roaster" class, on November 3, 2011, and the rule went into effect on January 1, 2014.

On November 18, 2013, before the January 1, 2014, effective date for the 2011 final rule, the National Chicken Council (NCC) petitioned FSIS to amend the definition and standard of identity for the "roaster" chicken class to remove the 8-week minimum age requirement and to increase the RTC carcass weight to 5.5 pounds (<http://www.fsis.usda.gov/wps/wcm/connect/adf54579-7a18-4ab2-a9b5-88f1eef65332/Petition-National-Chicken-Council.pdf?MOD=AJPERES>). According to the petition, the "roaster" standard established in the 2011 final rule would detract from the orderly and efficient marketing of classes of poultry because companies would be unable to label and market chickens with the RTC weight and other physical attributes of a "roaster" as "roasters" because of the minimum age requirement. The NCC asserted that improvements in breeding and poultry management techniques that have continued since FSIS published

the November 2011 final rule have enabled producers to raise chickens with the characteristics of roasters in under 8 weeks.

FSIS, in consultation with USDA's Agricultural Marketing Service (AMS), conducted a preliminary review of the NCC petition and supporting data and tentatively concluded that the petition had merit. Therefore, in the December 27, 2013, edition of the FSIS Constituent Update, FSIS announced that it would continue to allow chickens younger than 8 weeks of age to be labeled and marketed as "roasters" if these birds met all of the other characteristics of a "roaster" (http://www.fsis.usda.gov/wps/wcm/connect/7f5a78cd-48f5-411b-bcf3-6f0035e72ff8/Constituent-Update-122713.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=7f5a78cd-48f5-411b-bcf3-6f0035e72ff8). They would have to have a RTC carcass weight of 5 pounds or more; be tender-meated; and have soft, pliable, smooth-textured skin that is somewhat less flexible than that of a broiler or fryer. FSIS also stated that it intended to propose to revise the roaster definition or reaffirm the definition established in the November 2011 final rule.

In July 2014, FSIS, in consultation with AMS, completed its review of the NCC petition and concluded that the available data supported the requested action (see the August 19, 2015 proposed rule "Classes of Poultry" (80 FR 50228)). On July 23, 2014, FSIS

sent a letter to the NCC informing the organization that the Agency had decided to grant the petition (<http://www.fsis.usda.gov/wps/wcm/connect/d6fba22b-271d-4204-adc6-56ab45d7b587/NCC-FSIS-Response-72314.pdf?MOD=AJPERES>). On August 19, 2015, FSIS published a proposed rule to amend the poultry class standards to define a "roaster" or "roasting chicken" as a young chicken (less than 12 weeks of age) of either sex, with a RTC carcass weight of 5.5 pounds or more, that is tender-meated with soft, pliable smooth-textured skin and breastbone cartilage that may be somewhat less flexible than that of a "broiler" or "fryer." After reviewing the comments on the proposed rule, FSIS is finalizing it without changes.

Summary of Comments and Responses

FSIS received four comments on the proposed rule, one from an organization representing the chicken industry and three from private citizens.

An organization representing the chicken industry strongly supported the proposed amendment because of the positive impacts on the poultry industry. According to the comment, such impacts include: (1) aiding in the orderly and efficient marketing of classes of poultry in the United States, (2) eliminating the burden of periodically amending the regulation to reflect industry advancements in breeding by removing the minimum age

requirement, and (3) reducing the cost for producers to efficiently raise birds. The organization also commented that efficient raising of birds would keep the cost of the final product lower for consumers because companies would not need to continue to pay for birds' feed until the birds reach eight weeks.

The following is a summary of other relevant issues raised in the comments opposed to the rule and FSIS's responses.

Comment: An individual opposed amending the "roaster" definition because the commenter believed that the change poses a health risk to the public. According to the comment, increasing the RTC weight from 5 pounds to 5.5 pounds will change the time that a "roasting chicken" will have to cook.

Response: FSIS disagrees that amending the "roaster" definition poses a health risk to the public. FSIS recommends cooking whole chicken to a safe minimum internal temperature of 165 °F (73.9 °C) as measured with a food thermometer regardless of the weight of the bird. FSIS and standard cooking guidance recommend that those preparing whole chickens check the internal temperature in the innermost part of the thigh and wing and the thickest part of the breast. For planning purposes, some consumers approximate cooking times based on the weight of the

carcass. FSIS requires all poultry labels to display an accurate net weight.

Comment: Two comments from individuals stated that FSIS should maintain the 8-12 week age criteria for "roasting chickens." According to the comments, "roasters" have a superior texture and flavor spectrum because of their age and not their size. One commenter asserted that the flavor of the meat improves with more bone versus cartilage in the finished meal. Another commenter said that the older the birds, the more firm and less fatty the meat. That commenter stated that consumers pay a premium for an older bird not a larger bird.

Response: The new standard for "roasting chicken" eliminates the minimum age requirement of 8 weeks. Chickens up to 12 weeks may be labeled as "roasters." Additionally, the "roaster" standard includes physical attributes, including those the commenters identified: the birds must be tender-meated with soft, pliable, smooth-textured skin and have breastbone cartilage that may be somewhat less flexible than that of a "broiler" or "fryer." Chickens that do not meet these physical attributes do not meet the standard for "roaster."

Comment: One individual stated that to assure consumers that they are purchasing an appropriately aged bird, product labels should indicate the age of the bird at the time of

slaughter. According to the commenter, through this labeling information, consumers can decide whether they are purchasing a roaster or a broiler. Another individual said that companies should not be required to label birds as "broilers" or "roasters" if the only difference between the two is size. According to the comment, the labeling should simply provide the RTC carcass weight.

Response: Requiring that poultry carcasses be labeled with the age at time of slaughter would place an undue burden on industry without providing information to consumers that will inform their purchasing decisions. Both "roasters" and "broilers" may, alternatively, be labeled as "whole young chickens" if the manufacturer prefers not to label them as "roasters" or "broilers" (9 CFR 381.117). Also, FSIS agrees with the petitioners that as long as chickens 12 weeks or younger have the appropriate characteristics, they may be labeled as "roasters."

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive

impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a "non-significant" regulatory action under section 3(f) of Executive Order 12866.

Accordingly, the rule has not been reviewed by the Office of Management and Budget under Executive Order (E.O.) 12866.

Economic Impact Analysis

FSIS affirms the preliminary regulatory impact analysis¹ and is finalizing the proposed rule and regulatory impact analysis without change. This final rule will not have significant costs because FSIS allows chickens younger than 8 weeks with the physical attributes of "roasters" to be labeled as "roasters."² The final rule will codify present practices and will not impose new requirements.

Amending the poultry class definition of "roaster" will benefit consumers by ensuring that chickens labeled as "roasters" continue to meet consumer expectations, and that the labels are truthful and not misleading. Consequently, consumers will be able to make informed purchase decisions.

¹ <http://www.fsis.usda.gov/wps/wcm/connect/3fc66d17-1b67-4e09-a4a2-5eabbc55940a/2015-0026.htm?MOD=AJPERES>

² See Constituent Update:
<http://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2013/ConstUpdate122713>

Regulatory Flexibility Act Assessment

The FSIS Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This final rule will not result in additional costs to the industry because FSIS allows chickens younger than 8 weeks with the physical attributes of "roasters" to be labeled as "roasters."

Paperwork Reduction Act

FSIS has reviewed this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and has determined that the information collection related to labeling has been approved by OMB under OMB control number 0583-0092.

FSIS does not anticipate many label changes as a result of the change to the "roaster" definition because establishments that produce chickens that comply with the "roaster" poultry class standard are already labeling these birds as "roasters."

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be

required before parties may file suit in court challenging this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FSIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

USDA Non-Discrimination Statement

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U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410
Fax: (202) 690-7442

E-mail: program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this Federal Register publication on-line through the FSIS Web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, Federal Register notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects in 9 CFR Part 381

Food grades and standards, Poultry and poultry products.

For the reasons stated in the preamble, FSIS amends 9 CFR Part 381, as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451-470; 7 CFR 2.7, 2.18, 2.53.

2. Amend § 381.170 by revising paragraph (a)(1)(iii) to read as follows:

§ 381.170 Standards for kinds and classes, and for cuts of raw poultry.

(a) * * *

(1) * * *

(iii) Roaster or roasting chicken. A “roaster” or “roasting chicken” is a young chicken (less than 12 weeks of age), of either sex, with a ready-to-cook carcass weight of 5.5 pounds or

more, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than that of a broiler or fryer.

Done at Washington, DC, on: April 8, 2016.

Alfred V. Almanza,

Acting Administrator.

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